

In re) Fair Hearing No. 15,683
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Appeal of)

The petitioner appeals a decision of the Department of Social Welfare terminating her Food Stamp benefits due to excess income. The issue is whether the income of her parents with whom she lives must be included in the calculation of her benefits.

1. The petitioner is the twenty-one-year-old mother of two children, one of whom is a newborn. On September 7, 1998, five days prior to the birth of her second child, the petitioner, who had moved out of her parents' home at the age of eighteen, moved back in with them. At that time the petitioner was receiving ANFC and Food Stamps and reported the move to the Department of Social Welfare (DSW). She reported income for September of 1998 as \$23 per month from ANFC and \$663 in Social Security Disability benefits which she receives based upon a disabling condition, cerebral palsy. She pays no rent to her parents but splits the electric and phone bills with them. She is currently taking college courses with the help of the Vocational Rehabilitation Department.

2. As part of her Food Stamp application, the

petitioner was required to list other members of her household and their income. The petitioner's parents, who are also disabled, were listed along with their Social Security income of \$1,327.60 per month for her father and \$296.80 per month for her mother. In addition, the petitioner listed as a household member her nineteen-year-old brother who is a student (studying for his GED) and earns no income. The petitioner's parents and brother do not want to receive Food Stamp benefits and have not themselves applied for such benefits.

3. Beginning September 14, 1998, the Department mailed the petitioner a series of notices which had conflicting decisions on her continued eligibility and the benefit amount based on the inclusion or exclusion of her parents' income and shelter calculations. It was first determined that the parents' income had to be included, then it was excluded but an adjustment was made on the shelter amounts. Finally the supervisor determined that the petitioner's parents' income had to be included because she is less than twenty-two years old. She appealed that decision.

4. Calculations were performed at that time for a family of five, excluding the child who was born after the application. For some unexplained reason the new child was not picked up in subsequent calculations of eligibility. At the hearing, the hearing officer asked the Department to

recalculate the petitioner's household income for September, 1998 using six persons in the household. The new calculation was as follows:

Petitioner's Soc. Sec. income	\$ 663.00
Petitioner's ANFC income	23.00
Petitioner's father's income	1,327.60
Petitioner's mother's income	296.80
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TOTAL UNEARNED INCOME	\$2,310.40

This income was subjected to the following deductions:

Standard Deduction	- \$134.00
Medical Expenses	- 52.60
(\$87.60 in Medicaid premiums less standard liability of \$35.00)	
No excess shelter deductions	- 0
(Portion of shelter expenses which is more than 50% of family income)	

Mortgage	\$256.23
Taxes	69.02
Ins.	33.67
Utilities	<u>330.00</u>

Total Shelter	\$588.92
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TOTAL DEDUCTIONS	<hr/> - \$186.60 <hr/>
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NET COUNTABLE FOOD STAMP INCOME	\$2,123.80
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MAXIMUM NET INCOME FOR FAMILY OF 6	\$1,838.00
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RESULT = OVER INCOME

5. The petitioner did not challenge the accuracy of the computations used or the deductions. Rather, she feels that it was incorrect for the Department to have included the income of her parents in determining her and her children's eligibility for Food Stamps since she is an adult. Her father testified that he and his wife are

disabled and on their fixed income cannot afford to feed their grandchildren, as well as their adult daughter and son. They point out that they have saved the state money by allowing their daughter and grandchildren to live with them and are providing care for their grandchildren while their daughter goes to school.

ORDER

The decision of the Department is affirmed.

REASONS

The regulations defining "household" for the purpose of Food Stamp eligibility generally require that persons who live in the same home and customarily purchase and prepare meals must apply as a unit for benefits. F.S.M. § 273.1 (a)(1). However, special rules apply when family members live together, as follows:

2. Special Definition

- i. The following individuals living with others or groups of individuals living together shall be considered as customarily purchasing food and preparing meals together even if they do not do so:

. . .

- C. Parent(s) living with their natural, adopted or step-children 21 years of age or younger.

F.S.M. 273.1 (a)

This regulation requires the Department to include

parents and children aged twenty-one or younger in the same household unit in determining Food Stamp eligibility. There is no exception made in that regulation for children under twenty-two who have their own children.¹

The petitioner makes no argument that the regulation adopted by the Department requiring the pooling of family income violates Food Stamp law or is otherwise illegal. The petitioner's argument in this matter is that the regulation is unfair because it places a burden on her parents to pay for food for her children. It is not clear, however, that it does impose such a burden as her parents' generosity in providing shelter to her has presumably freed up much of her income which could be used to buy food for her children.

¹ This regulation was adopted on January 24, 1997, and, according to the bulletin which accompanied it, was intended to eliminate "separate household status for children under 22 who live with their parents and are married or living with their children." The prior regulation read as follows:

- C. Parent(s) living with their natural, adopted or step-children 21 years of age or younger (who are not themselves parents living with their children or married and living with their spouses). Children 21 years of age or younger who are parents themselves and living with their children or who are married and living with their spouses may be considered separate households if they purchase food and prepare meals separately.

W.A.M. 273.1(a)(2)
February 1 1995
(superseded)

The regulations do continue to allow children under the age of eighteen who are married or who have children to form a separate household if they live with custodians who are not their parents. See. F.S.M. 273.1(a)(2)(B.)

Even if this were not so, the fact that a policy may cause hardship for her and her family is not sufficient reason in itself to conclude that the policy is illegal.

As the Department's decision is in accord with its regulations, the Board is required to affirm the decision. 3 V.S.A. § 3091(d), Fair Hearing Rule 17. The petitioner should reapply if her situation changes in any way, and particularly as she approaches her twenty-second birthday. The petitioner should also be aware that one or both of her parents as disabled persons could achieve separate household status under certain conditions if they are now or will turn sixty years of age in the next year. See W.A.M. § 273.1(a)(2)(ii).

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